CASE NO. _____

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS AFL-CIO, EAST BAY AUTOMOTIVE MACHINISTS LODGE NO. 1546, DISTRICT LODGE 190,

Petitioner,
v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

ON APPEAL FROM NATIONAL LABOR RELATIONS BOARD
364 NLRB NO. 29, CASE 32-CA-151443

PETITION FOR REVIEW

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International Association of Machinists and Aerospace Workers, AFL-CIO, East Bay Automotive Machinists Lodge No. 1546, District Lodge 190, hereby petitions for review from the Decision and Order of the National Labor Relations Board, attached hereto as Exhibit A, issued on June 16, 2016, in *SJK, Inc. d/b/a Fremont Ford and International Association of Machinists and Aerospace Workers, AFL-CIO, East Bay Automotive Machinists Lodge No. 1546, District Lodge 190*, 364 NLRB No. 29 (2016).

Date: December 29, 2016

Respectfully Submitted

/s/ David A. Rosenfeld

By: David A. Rosenfeld
WEINBERG, ROGER & ROSENFELD
A Professional Corporation

Attorneys for Petitioner
INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS AFL-CIO, EAST BAY AUTOMOTIVE MACHINISTS LODGE NO. 1546, DISTRICT LODGE 190

EXHIBIT A

SJK, Inc. d/b/a Fremont Ford *and* International Association of Machinists and Aerospace Workers, AFL–CIO, East Bay Automotive Machinists Lodge No. 1546, District Lodge 190. Case 32–CA–151443

June 16, 2016

DECISION AND ORDER

BY CHAIRMAN PEARCE AND MEMBERS MISCIMARRA AND MCFERRAN

The General Counsel seeks summary judgment in this case on the grounds that there are no genuine issues of material fact as to the allegations of the complaint, and that the Board should find, as a matter of law, that the Respondent violated Section 8(a)(1) by maintaining an agreement that prohibits its employees from participating in collective or class litigation in all forums.

Pursuant to a charge filed on May 4, 2015, by the International Association of Machinists and Aerospace Workers, AFL–CIO, East Bay Automotive Machinists Lodge No. 1546, District Lodge 190 (Charging Party), the General Counsel issued a complaint on November 24, 2015, and an amended complaint on December 4, 2015. The amended complaint alleges that at all material times since at least November 4, 2014, the Respondent has maintained an Employee Acknowledgement and Agreement (Arbitration Agreement) that employees are required to sign at the time of their hire. In addition, the amended complaint alleges that the Arbitration Agreement specifically informs employees that they are bound to the agreement as a condition of their employment. The relevant portions of the Arbitration Agreement read as follows:

> I . . . acknowledge that the Company utilizes a system of alternative dispute resolution which involves binding arbitration to resolve all disputes which may arise out of the employment context. . . . I and the Company both agree that any claim, dispute, and/or controversy that either party may have against one another (including, but not limited to, any claims of discrimination and harassment, whether they be based on . . . Title VII of the Civil Rights Act of 1964, as amended, as well as all other applicable state or federal laws or regulations) which would otherwise require or allow resort to any court or other governmental dispute resolution forum between myself and the Company . . . arising from, related to, or having any relationship or connection whatsoever with my seeking employment with, employment by, or other association with the Company, whether based on tort, contract, statutory, or equitable law, or otherwise, (with the sole exception of claims arising under the National Labor Relations Act which are brought before the National Labor Relations Board. . .) shall be submitted to and determined exclusively by binding arbitration. . . . [T]he arbitrator is prohibited from consolidating the claims of others into one proceeding. This means that an arbitrator will hear only my individual claims and does not have the authority to fashion a proceeding as a class or collective action or to award relief to a group of employees in one proceeding. Thus, the Company has the right to defeat any attempt by me to file or join other employees in a class, collective, representative, or joint action lawsuit or arbitration (collectively "class claims"). I further understand that I will not be disciplined, discharged, or otherwise retaliated against for exercising my rights under Section 7 of the National Labor Relations Act, including but not limited to challenging the limitation on class, collective, representative, or joint action. I understand and agree that nothing in this agreement shall be construed so as to preclude me from filing any administrative charge with, or from participating in any investigation of a charge conducted by, any government agency such as the Department of Fair Employment and Housing and/or the Equal Employment Opportunity Commission; however, after I exhaust such administrative process/investigation, I understand and agree that [I] must pursue any such claims through this binding arbitration procedure.

The amended complaint alleges that the Arbitration Agreement interferes with employees' Section 7 rights to engage in collective legal action by binding employees to a waiver of their rights to participate in collective and class litigation and that, by this conduct, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act in violation of Section 8(a)(1) of the Act.

On December 9, 2015, the Respondent filed an answer to the complaint. On December 18, 2015, the Respondent filed an answer to the amended complaint admitting all of the factual allegations in the amended complaint, but denying the legal conclusions in the amended complaint and asserting two affirmative defenses.

On January 11, 2016, the General Counsel filed a Motion for Summary Judgment. On February 1, 2016, the Charging Party filed a Joinder in Motion for Summary Judgment. On February 10, 2016, the Board issued an

order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On February 23, 2016, the Respondent filed an Opposition to the Motion for Summary Judgment, and on February 24, 2016, the Charging Party refiled its Joinder in Motion for Summary Judgment.[1] On March 8, 2016, the General Counsel filed a response to the Respondent's Opposition, and the Charging Party filed a Partial Joinder in the General Counsel's response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In *Murphy Oil USA, Inc.,* 361 NLRB No. 72 (2014), enf. denied in relevant part 808 F.3d 1013 (5th Cir. 2015), the Board reaffirmed the relevant holdings in *D. R. Horton, Inc*., 357 NLRB 2277 (2012), enf. denied in relevant part 737 F.3d 344 (5th Cir. 2013), and found unlawful the maintenance and enforcement of a mandatory arbitration agreement requiring employees, as a condition of employment, to waive their rights to pursue class or collective actions involving employment-related claims in all forums, whether arbitral or judicial. As stated, the Respondent admits in its amended answer that it has maintained the Arbitration Agreement and required employees to sign it as a condition of employment since at least November 4, 2014. By its terms, the Arbitration Agreement requires that all employment-based claims be resolved through individual, binding arbitration. In its response to the Board's Notice to Show Cause, the Respondent raises no material issues of fact or any other issues warranting a hearing. The Respondent's arguments largely focus on the assertion that *Murphy Oil* and *D. R. Horton* were wrongly decided.[2] We disagree for the reasons given in those decisions. See also *Lewis v. Epic Systems Corp.*, __ F.3d __, No. 15-2997 (7th Cir., May 26, 2016) (holding mandatory individual arbitration agreement that did not permit collective action in any forum violates the Act and is also unenforceable under the Federal Arbitration Act, 9 U.S.C. §§1, et seq.). Accordingly, we apply those cases here and find that the Respondent violated Section 8(a)(1) by maintaining an agreement requiring employees to waive their right to pursue class or collective claims in any forum.[3]

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a California corporation with an office and place of business in Newark, California, has been engaged in the sale and servicing of automobiles.

During the 12-month period ending October 31, 2015, the Respondent, in conducting its operations described above, derived gross revenues in excess of $500,000 and purchased and received goods or services valued in ex-

[1] The Charging Party's Joinder in Motion for Summary Judgment raises substantive arguments that are wholly outside the scope of the General Counsel's amended complaint. It is well settled that a charging party cannot enlarge upon or change the General Counsel's theory of a case. *Kimtruss Corp.,* 305 NLRB 710 (1991). We also decline to award the additional remedies requested by the Charging Party. We find that the standard remedies requested by the General Counsel are sufficient to remedy the unfair labor practice found. See, e.g., *AT&T,* 362 NLRB No. 105, slip op. at 1 fn. 3 (2015).

[2] The Respondent also asserts that the Arbitration Agreement is lawful because it does not prevent employees from filing charges with the Board or with other administrative agencies and assures employees that they will not be disciplined, discharged, or otherwise retaliated against for exercising their Sec. 7 rights. We reject these arguments for the reasons stated in *SolarCity Corp*., 363 NLRB No. 83 (2015).

The Respondent further asserts that the filing of a class action on behalf of potential class members, without action by each employee to affirmatively associate with the filing of the lawsuit, is not concerted activity under Sec. 7. Contrary to the Respondent's assertion, as the Board made clear in *Beyoglu*, 362 NLRB No. 152 (2015), "the filing of an employment-related class or collective action by an individual employee is an attempt to initiate, to induce, or to prepare for group action and is therefore conduct protected by Sec. 7." Id., slip op. at 2. See also *D. R. Horton*, 357 NLRB at 2279.

In addition, the Respondent asserts that employees would not reasonably construe the Arbitration Agreement to restrict employees from filing charges with the Board or from accessing the Board's processes. The amended complaint does not allege the agreement to be unlawful on this basis. In addition, in his Motion for Summary Judgment, the General Counsel focuses exclusively on whether the agreement infringes on employees' rights to engage in collective action and does not argue that the agreement is also unlawful because employees would construe it to restrict their right to file charges with the Board or otherwise interfere with their access to the Board's processes. In these circumstances, we find that the issue raised by the Respondent is not before us for our consideration.

[3] Our dissenting colleague, relying on his dissenting position in *Murphy Oil*, 361 NLRB No. 72, slip op. at 22–35 (2014), would find that the Respondent's Arbitration Agreement does not violate Sec. 8(a)(1). He observes that the Act does not "dictate" any particular procedures for the litigation of non-NLRA claims, and "creates no substantive right for employees to insist on class-type treatment" of such claims. This is all surely correct, as the Board has previously explained in *Murphy Oil*, above, slip op. at 2, and *Bristol Farms*, 363 NLRB No. 45, slip op. at 2 & fn. 2 (2015). But what our colleague ignores is that the Act "does create a right to *pursue* joint, class, or collective claims if and as available, without the interference of an employer-imposed restraint." *Murphy Oil*, above, slip op. at 2 (emphasis in original). The Respondent's Arbitration Agreement is just such an unlawful restraint.

Likewise, for the reasons explained in *Murphy Oil* and *Bristol Farms*, there is no merit to our colleague's view that finding the Arbitration Agreement unlawful runs afoul of employees' Sec. 7 right to "refrain from" engaging in protected concerted activity. See *Murphy Oil*, above, slip op. at 18; *Bristol Farms*, above, slip op. at 2. Nor is he correct in insisting that Sec. 9(a) of the Act requires the Board to permit individual employees to prospectively waive their Sec. 7 right to engage in concerted legal activity. See *Murphy Oil*, above, slip op. at 17–18; *Bristol Farms*, above, slip op. at 2.

cess of $5000 which originated outside the State of California.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

Since at least November 4, 2014, the Respondent has maintained the Arbitration Agreement that employees are required to sign as a condition of employment. As described above, the Arbitration Agreement requires employees to bring all employment-related disputes to individual binding arbitration, thereby interfering with employees' Section 7 right to engage in collective legal activity.

CONCLUSIONS OF LAW

1. The Respondent, SJK, Inc. d/b/a Fremont Ford, is an employer within the meaning of Section 2(2), (6), and (7) of the Act.

2. By maintaining a mandatory arbitration agreement under which employees are required, as a condition of employment, to waive the right to maintain class or collective actions in all forums, whether arbitral or judicial, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act, and has violated Section 8(a)(1) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(1) of the Act, we shall order it to cease and desist and to take certain affirmative actions designed to effectuate the policies of the Act. Specifically, we shall order the Respondent to rescind or revise the Arbitration Agreement; notify all current and former employees who were required to sign or otherwise become bound to the Arbitration Agreement about the rescission or revision and, if revised, provide them a copy of the revised agreement; and post a notice at its Newark, California location where the agreement was in effect. See *D. R. Horton*, above at 2289.

ORDER

The National Labor Relations Board orders that the Respondent, SJK, Inc. d/b/a Fremont Ford, Newark, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Maintaining a mandatory arbitration agreement that require employees, as a condition of employment, to waive the right to maintain employment-related class or collective actions in all forums, whether arbitral or judicial.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed to them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the Arbitration Agreement in all of its forms, or revise it in all of its forms to make clear to employees that the agreement does not constitute a waiver of their right to maintain employment-related joint, class, or collective actions in all forums.

(b) Notify all current and former employees who were required to sign or otherwise become bound to the mandatory Arbitration Agreement in any form that it has been rescinded or revised, and, if revised, provide them a copy of the revised agreement.

(c) Within 14 days after service by the Region, post at its Newark, California facility copies of the attached notice marked "Appendix."[4] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix" to all current employees and former employees employed by the Respondent at any time since November 4, 2014.

(d) Within 21 days after service by the Region, file with the Regional Director for Region 32 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. June 16, 2016

Mark Gaston Pearce, Chairman

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

MEMBER MISCIMARRA, dissenting.

In this case, my colleagues grant the General Counsel's motion for summary judgment and find that the Respondent's Employee Acknowledgment and Agreement (Agreement) violates Section 8(a)(1) of the National Labor Relations Act (the Act or NLRA) because the Agreement waives the right to participate in class or collective actions regarding non-NLRA employment claims. I respectfully dissent from this ruling and finding for the reasons explained in my partial dissenting opinion in *Murphy Oil USA, Inc.*[1] Although I agree that there are no genuine issues of material fact warranting a hearing, I believe the General Counsel is not entitled to judgment as a matter of law on this complaint allegation. To the contrary, the *Respondent* is entitled to judgment as a matter of law. Accordingly, I would enter summary judgment for the Respondent and against the General Counsel and dismiss the complaint.[2]

I agree that an employee may engage in "concerted" activities for "mutual aid or protection" in relation to a claim asserted under a statute other than NLRA.[3] However, Section 8(a)(1) of the Act does not vest authority in the Board to dictate any particular procedures pertaining to the litigation of non-NLRA claims, nor does the Act render unlawful agreements in which employees waive class-type treatment of non-NLRA claims. To the contrary, as discussed in my partial dissenting opinion in *Murphy Oil*, NLRA Section 9(a) protects the right of every employee as an "individual" to "present" and "adjust" grievances "at any time."[4] This aspect of Section 9(a) is reinforced by Section 7 of the Act, which protects each employee's right to "refrain from" exercising the collective rights enumerated in Section 7. Thus, I believe it is clear that (i) the NLRA creates no substantive right for employees to insist on class-type treatment of non-NLRA claims;[5] (ii) a class-waiver agreement pertaining to non-NLRA claims does not infringe on any NLRA rights or obligations, which has prompted the overwhelming majority of courts to reject the Board's position regarding class-waiver agreements;[6] and (iii)

[1] 361 NLRB No. 72, slip op. at 22–35 (2014) (Member Miscimarra, dissenting in part). The Board majority's holding in *Murphy Oil* invalidating class-action waiver agreements was denied enforcement by the Court of Appeals for the Fifth Circuit. *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015).

[2] It is well settled that summary judgment may be entered in favor of the party against whom the motion is filed even though that party has not filed a cross-motion for summary judgment. See 10A Charles A. Wright, Arthur R. Miller & Mary K. Kane, *Federal Practice and Procedure* § 2720, at 347 (3d ed. 1998) ("The weight of authority . . . is that summary judgment may be rendered in favor of the opposing party even though the opponent has made no formal cross-motion under [Federal] Rule [of Civil Procedure] 56.") (citing cases).

[3] I agree that non-NLRA claims can give rise to "concerted" activities engaged in by two or more employees for the "purpose" of "mutual aid or protection," which would come within the protection of NLRA Sec. 7. See *Murphy Oil*, 361 NLRB No. 72, slip op. at 23–25 (Member Miscimarra, dissenting in part). However, the existence or absence of Sec. 7 protection does not depend on whether non-NLRA claims are pursued as a class or collective action, but on whether Sec. 7's statutory requirements are met—an issue separate and distinct from whether an individual employee chooses to pursue a claim as a class or collective action. Id.; see also *Beyoglu*, 362 NLRB No. 152, slip op. at 4–5 (2015) (Member Miscimarra, dissenting).

[4] *Murphy Oil*, above, slip op. at 30–34 (Member Miscimarra, dissenting in part). Sec. 9(a) states: "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That *any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted*, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective-bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment" (emphasis added). The Act's legislative history shows that Congress intended to preserve every individual employee's right to "adjust" any employment-related dispute with his or her employer. See *Murphy Oil*, above, slip op. at 31–32 (Member Miscimarra, dissenting in part).

[5] When courts have jurisdiction over non-NLRA claims that are potentially subject to class treatment, the availability of class-type procedures does not rise to the level of a substantive right. See *D. R. Horton, Inc. v. NLRB*, 737 F.3d 344, 362 (5th Cir. 2013) ("The use of class action procedures . . . is not a substantive right.") (citations omitted), petition for rehearing en banc denied No. 12–60031 (5th Cir. 2014); *Deposit Guaranty National Bank v. Roper*, 445 U.S. 326, 332 (1980) ("[T]he right of a litigant to employ Rule 23 is a procedural right only, ancillary to the litigation of substantive claims.").

[6] The Fifth Circuit has repeatedly denied enforcement of Board orders invalidating a mandatory arbitration agreement that waived class-type treatment of non-NLRA claims. See, e.g., *Murphy Oil USA, Inc. v. NLRB*, above; *D. R. Horton, Inc. v. NLRB,* above. The overwhelming majority of courts considering the Board's position have likewise rejected it. See *Murphy Oil*, 361 NLRB No. 72, slip op. at 34 (Member Miscimarra, dissenting in part); id., slip op. at 36 fn. 5 (Member Johnson, dissenting) (collecting cases); *Cellular Sales of Missouri, LLC v. NLRB,* __ F.3d __ (8th Cir. 2016); see also *Patterson v. Raymours Furniture Co*., 96 F.Supp.3d 71 (S.D.N.Y. 2015); *Nanavati v. Adecco USA, Inc.*, 99 F.Supp.3d 1072 (N.D. Cal. 2015), motion to certify for interlocutory appeal denied 2015 WL 4035072 (N.D. Cal. June 30, 2015); *Brown v. Citicorp Credit Services,* No. 1:12-CV-00062-BLW, 2015 WL 1401604 (D. Idaho Mar. 25, 2015) (granting reconsideration of prior determination that class waiver in arbitration agreement violated NLRA); *Bell v. Ryan Transportation Service,* No. 15-9857-JWL, 2016 WL 1298083 (D. Kan. Mar. 31, 2016); but see *Lewis v. Epic Systems Corp.*, __ F.3d __, No. 15-2997 (7th Cir. May 26, 2016); *Tot-*

enforcement of a class-action waiver as part of an arbitration agreement is also warranted by the Federal Arbitration Act (FAA).[7] Although questions may arise regarding the enforceability of particular agreements that waive class or collective litigation of non-NLRA claims, I believe these questions are exclusively within the province of the court or other tribunal that, unlike the NLRB, has jurisdiction over such claims.[8]

Accordingly, I respectfully dissent.

Dated, Washington, D.C. June 16, 2016

Philip A. Miscimarra Member

NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for you benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT maintain a mandatory arbitration agreement that requires our employees, as a condition of employment, to waive the right to maintain employment-related class or collective actions in all forums, whether arbitral or judicial.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL rescind the Employee Acknowledgment and Agreement Arbitration Agreement (the Arbitration Agreement) in all of its forms, or revise it in all of its forms to make clear that the agreement does not constitute a waiver of your right to maintain employment-related joint, class, or collective actions in all forums.

WE WILL notify all current and former employees who were required to sign or otherwise become bound to the mandatory Arbitration Agreement in all of its forms that the agreement has been rescinded or revised and, if revised, WE WILL provide them a copy of the revised agreement.

SJK, INC. D/B/A FREMONT FORD

The Board's decision can be found at www.nlrb.gov/case/32–CA–51443 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

ten v. Kellogg Brown & Root, LLC, No. ED CV 14–1766 DMG (DTBx), 2016 WL 316019 (C.D. Cal. Jan. 22, 2016).

[7] For the reasons expressed in my *Murphy Oil* partial dissent and those thoroughly explained in former Member Johnson's dissent in *Murphy Oil*, the FAA requires that the arbitration agreement be enforced according to its terms. *Murphy Oil*, above, slip op. at 34 (Member Miscimarra, dissenting in part); id., slip op. at 49–58 (Member Johnson, dissenting).

[8] Because I disagree with the Board's decisions in *Murphy Oil*, above, and *D. R. Horton, Inc.*, 357 NLRB 2277 (2012), enf. denied in pert. part 737 F.3d 344 (5th Cir. 2013), and I believe the NLRA does not render unlawful arbitration agreements that provide for the waiver of class-type litigation of non-NLRA claims, I find it unnecessary to reach whether such agreements should independently be deemed lawful to the extent they "leave[] open a judicial forum for class and collective claims," *D. R. Horton*, supra at 2288, by permitting the filing of complaints with administrative agencies that, in turn, may file class or collective action lawsuits. See *Owen v. Bristol Care, Inc.*, 702 F.3d 1050 (8th Cir. 2013).

PROOF OF SERVICE

I am a citizen of the United States and resident of the State of California. I am employed in the County of Alameda, State of California, in the office of a member of the bar of this Court, at whose direction the service was made. I am over the age of eighteen years and not a party to the within action.

On December 29, 2016, I served the following documents in the manner described below:

PETITION FOR REVIEW

☑ (BY ELECTRONIC SERVICE) By electronically mailing a true and correct copy through Weinberg, Roger & Rosenfeld's electronic mail system from kkempler@unioncounsel.net to the email addresses set forth below.

On the following part(ies) in this action:

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on December 29, 2016, at Alameda, California.

/s/ Karen Kempler
Karen Kempler